

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Anthony Moore,)	
)	
Plaintiff,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	Case No. 1:11-mc-002
Leann A. Bertsch, Robyn Schmalenberger,)	
Jean Sullivan, Wade Strand, Patrick Ross,)	
Sean Conway, Mr. Holla, Nurse Kimberly,)	
Randy Kalis, Brian Jacobson, Nathaniel)	
Erickson, and Jessica Wilkens, in their)	
official and individual capacities,)	
)	
Defendants.)	

Anthony Moore,)	
)	
Plaintiff,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	Case No. 1:11-mc-005
Leann A. Bertsch, et al.,)	
)	
Defendants.)	

The plaintiff, Anthony Moore, filed two Prison Litigation Reform Act packets which contained proposed complaints and applications to proceed *in forma pauperis*. See Case No. 1:11-mc-002, Docket No. 1; Case No. 1:11-mc-005, Docket No. 1.

On December 2, 2011, Magistrate Judge Charles S. Miller, Jr., issued a “Report and Recommendation” which recommended “that the court issue orders in each of the separate matters instructing the Clerk not to file the complaints and to deny Moore’s requests to proceed *in forma pauperis* both before this court and upon any appeal.” See Case No. 1:11-mc-002, Docket No. 11.

Judge Miller noted that Anthony Moore is an inmate at the North Dakota State Penitentiary and subject to the Prison Litigation Reform Act's "three strikes" provision under 28 U.S.C. § 1915(g). See Moore v. Hoeven, No. 3:08-cv-50 (D.N.D. April 1, 2009); Moore v. Bertsch, No. 1:09-cv-027, 2009 WL 2150966, *5 (D.N.D. July 13, 2009); Moore v. North Dakota, 131 S.Ct. 1505 (Mem.) (Order dated Feb. 22, 2011) (ordering Moore to be barred from any future civil filings unless he pays the United States Supreme Court's docketing fees). Judge Miller further stated that the "three strikes" provision in 28 U.S.C. § 1915(g) does not prohibit a prisoner from filing a civil action or appeal altogether. Rather, it denies the prisoner the benefit of proceeding *in forma pauperis* in all instances save one: when the prison is under imminent danger of serious physical injury at the time of the filing of the complaint or appeal." See Case No. 1:11-ms-002, Docket No. 11, p. 8. However, "[w]hen an inmate claims imminent danger of serious physical injury, the court is not required to blindly accept allegations that are conclusory or formulaic in nature. . . . This is particularly true when an inmate's prior assertions of imminent danger have proved to be grossly overstated or patently false." See Case No. 1:11-mc-002, Docket No. 11, pp. 8-9 (citations omitted). Anthony Moore has a long history of filing frivolous and unfounded complaints. See Report and Recommendation, Docket No. 5, pp. 9-10. Judge Miller concluded that Moore's new proposed complaints contained allegations that were either too conclusory or are substantively insufficient to avoid the "three strikes" bar under 28 U.S.C. § 1915(g).

On December 12, 2011, Anthony Moore filed an objection. See Case No. 1:11-mc-002, Docket No. 13. Moore essentially argues that he has met the touchstones to overcome the three strikes provisions.

On December 12, 2011, Moore filed a notice of appeal. See Case No. 1:11-mc-002, Docket No. 14. On December 20, 2011, the Eighth Circuit Court of Appeals directed Moore to pay the filing fee within fifteen days. See Docket No. 18. Moore did not pay the fee and, on January 5, 2012, the Eighth Circuit directed Moore to show cause within fourteen days why the appeal should not be dismissed. See Docket No. 19. The Eighth Circuit dismissed the appeal on January 18, 2012. See Docket No. 20.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record, and finds the Report and Recommendation to be thorough and persuasive. The Court **ADOPTS** the Report and Recommendation (Case No. 1:11-mc-002, Docket No. 11; Case No. 1:11-mc-005, Docket No. 5) in its entirety, **ORDERS** the Clerk of the Federal District Court of North Dakota not to file Anthony Moore's proposed complaints, and **DENIES** Moore's requests to proceed *in forma pauperis* before this Court and upon any appeal. This order is also in compliance with the orders of Senior District Judge Charles Kornmann and District Judge Jeffrey Viken.

IT IS SO ORDERED.

Dated this 10th day of February, 2012.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge
United States District Court